

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:**

B-220218

**DATE:** September 24, 1985

**MATTER OF:**

Richard N. Stockebrand

**DIGEST:**

1. Bid which offered a bid acceptance period shorter than that required in a solicitation is nonresponsive and bidder may not modify bid after opening nor may the deficiency be waived.
2. Prior improper award where the awardee shortened the bid acceptance period in the solicitation does not justify the error of accepting a nonresponsive bid for an award.

Richard N. Stockebrand protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. R5-14-85-86, issued by the United States Forest Service, for construction work on the East Fork of New River Trail Bridge, Shasta-Trinity National Forest.

We dismiss the protest pursuant to 4 C.F.R. § 21.3(f) (1985), which provides for dismissal of a protest without obtaining an agency report where it is clear on the face of the protest that it does not state a valid basis of protest.

The contracting officer determined that the bid was nonresponsive because the protester limited its bid acceptance period to 30 days while the IFB specified that bids offering less than a 60-day acceptance period would be rejected.

The protester states that it did not intend to limit the government's rights but assumed that the contract would be awarded within 30 days. It alleges that it read the 60-day acceptance requirement as meaning it had the right to accept the contract within 60 days and it felt that it was in both the Forest Service's and its own interest to start contract performance prior to 60 days. The protester also argues that it should have been given an opportunity to cure this defect after bid opening because it was only a minor informality or irregularity in its bid. Finally, the

033262

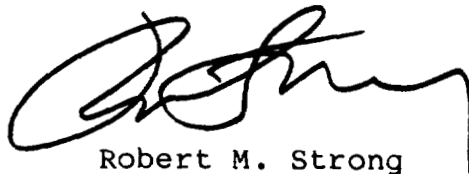
52316

protester contends that the Forest Service awarded a contract, under another solicitation, even though the awardee had included a similar limitation of the acceptance period which violated the solicitation's requirements. The protester states, therefore, that the Forest Service is inconsistent in its handling of its bid.

A bidder's intention to comply with the solicitation requirements must be determined from the face of the bid itself without resort to any explanation furnished after bid opening. Mobile Drilling Company, Inc., B-216989, Feb. 14, 1985, 85-1 C.P.D. ¶ 199. We have held that to allow a bidder to extend its bid acceptance period after bid opening would necessarily be prejudicial to other bidders who offered the required bid acceptance period because a bidder who offers the longer acceptance period assumes a greater risk of price or market fluctuations than a bidder who does not. Charles Vrana and Son Construction Company, B-218509, Apr. 26, 1985, 85-1 C.P.D. ¶ 480. Moreover, we have consistently held that an IFB requirement that a bid remain available for acceptance by the government for a prescribed time period to be considered for award is a material requirement and is not waivable or correctable after bid opening. Charles Vrana and Son Construction Company, B-218509, supra.

Finally, concerning the protester's contention that the Forest Service is being inconsistent, we note that although an improper award may have been made in a prior procurement, it does not justify repetition of the same error in subsequent procurements. Intex Insulating Company, B-216583, Oct. 11, 1984, 84-2 C.P.D. ¶ 401.

Accordingly, the Forest Service's rejection of the protester's bid as nonresponsive was proper.



Robert M. Strong  
Deputy Associate General Counsel

